



UNIVERSITY OF  
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School of Law  
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Research Report by the School of Law and Social Justice  
in collaboration with Liverpool Law Clinic

# *An Uphill Struggle: Securing Legal Status for Victims and Survivors of Trafficking*

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Research Report, February 2021

*Dr Samantha Currie and  
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## **Acknowledgements**

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## Contents

### **1. Background to the research project**

- 1.1. The Liverpool Law Clinic anti-trafficking project
- 1.2. Research aims
- 1.3. A note on terminology

### **2. Methodology**

### **3. The law and policy context**

- 3.1 Modern Slavery Act 2015
- 3.2 The international legal framework
- 3.3 The National Referral Mechanism
- 3.4 Immigration status of victims of modern slavery
- 3.5 Legal aid for victims of trafficking and modern slavery
  - 3.5.1 Additional financial pressures stemming from the Covid-10 pandemic

### **4. Situating the cases within the context of the law and policy framework and research review: key themes**

- 4.1. Disentangling complex immigration histories and intertwining NRM referrals for an unnecessarily adversarial Home Office
- 4.2. Missed opportunities to safeguard: the role of justice professionals
  - 4.2.1. The police
  - 4.2.2. Lawyers and judges
- 4.3. The considerable and lingering impact of criminal convictions
- 4.4. Time investment of solicitor: implications for funding of legal cases
  - 4.4.1. Pro bono legal representation: not an alternative to an appropriately funded legal aid system

### **5. Conclusions and recommendations**

## **Appendix: Case summaries**

## **Bibliography**

## **1. Background to the research project**

There is a growing recognition that victims and survivors of trafficking and other ‘modern slavery’ offences often experience difficulties accessing specialist legal advice as to their trafficking and immigration statuses. This is significant owing to the intrinsic connection between trafficking and immigration, and the centrality of the Home Office in the relevant decision-making processes. High quality legal advice can be a crucial gateway to securing formal identification as a victim and, for many, for establishing a secure immigration status in the UK. Legal representation can also be important for accessing the full range of support services, engaging with criminal justice processes, and obtaining redress for abuse.

This research project set out to explore the impact of legal representation on victims and survivors of modern slavery, such as trafficking, forced labour or domestic servitude. It focussed particularly on those navigating the decision-making frameworks which determine access to the status of ‘victim of modern slavery’ and entitlement to leave to remain in the UK.

### **1.1 The Liverpool Law Clinic anti-trafficking project**

The Liverpool Law Clinic is the University of Liverpool’s in-house legal practice, based within the School of Law and Social Justice. The in-house lawyers offer a clinical legal education module and volunteer projects to law students. Its solicitors are regulated by the Solicitor’s Regulation Authority and its (immigration related) services by the Office for Immigration Services Commissioner.

Jo Bezzano has led, since 2018, a Liverpool Law Clinic student project in which victims of trafficking are provided with legal advice. This project was aimed initially at clients who had not yet entered official processes such as the National Referral Mechanism (NRM), but as the project has developed clients with more complex cases, including those with criminal convictions, have been advised and represented. This project won the best new project award at the Attorney General’s Student Pro Bono Awards in 2019.

### **1.2 Research aims**

The research on which this report is based involved a collaboration between Jo Bezzano as legal practitioner and Samantha Curie as researcher. We aimed to build on the legal advice scheme within the Law Clinic by adding a research component. Through a combination of desk-based research and analysis of legal case files relating to clients who were represented as part of the Liverpool Law Clinic anti-trafficking project, the research aimed to:

- analyse the course of the legal interactions between the solicitor, acting on behalf of the clients, and the Home Office, and other agencies including support providers, legal practitioners and the Courts and Tribunals Service; and to
- situate this analysis within the context of the law and policy framework and findings of other researchers and stakeholders about access to legal advice and representation for victims and survivors of trafficking.

### 1.3 A note on terminology

This report refers to both *victims* and *survivors* of trafficking and modern slavery. The authors are aware that neither term is unproblematic and that there is a rich literature that has been developed, particularly in the context of domestic abuse and sexual violence, which explores the connotations and implications of the respective terms.<sup>1</sup> There is a delicate balance to be struck between recognising the agency of individuals, and their capacity for resilience, while still acknowledging their vulnerability and/or genuinely traumatic lived experiences. On those occasions that the report refers only to ‘victims’, it is in the context of the formal status of ‘victim of modern slavery’ that can be secured by a positive conclusive grounds decision under the NRM.

## 2. Methodology

The methodological approach of the project was two-fold. First, a desk-based review was carried out of (i) the law and policy framework which sets the backdrop to how access to legal advice and representation can be secured by victims and survivors of modern slavery and (ii) research conducted by other researchers and stakeholders which has focussed on issues relevant to this study, including access to legal aid for those in the NRM. Secondly, three case files of clients represented by the specialist immigration in-house solicitor at Liverpool Law Clinic were analysed. The findings of each methodological strand were considered in a holistic way with the insights yielded from the case analysis being situated within the context of the law and policy and research reviews. During this phase the approach was to assess both synergies *and* divergences between the findings of previous research and the clients represented by Liverpool Law Clinic.

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<sup>1</sup> See Dunn, J.L., “‘Victims’ and ‘Survivors’: Emerging Vocabularies of Motive for ‘Battered Women Who Stay’” (2005) 75(1) *Sociological Inquiry*, 1-30; Gupta, R., “‘Victim’ vs ‘Survivor’: feminism and language”, *Open Democracy*, 16 June 2014 < <https://www.opendemocracy.net/en/5050/victim-vs-survivor-feminism-and-language/> >.



The case files related to clients whose legal cases were being handled by the Law Clinic solicitor in 2019 and 2020. Due to the complexity and lengthy nature of the legal cases, the case files were extremely extensive (all ran to hundreds of pages) and the relevant events and documentation spanned across a considerable number of years. The process of gaining informed consent from the clients for the course of their legal case to be followed by the researcher being able to access to their files (including all documentation) was designed so that it took places over two-stages, on different days.<sup>2</sup> This was to ensure the clients had sufficient time to consider whether they wished to participate and to ask any questions they had about the research project.

The cases focussed on have certain shared characteristics. The clients had all been trafficked to or within the UK and been subject to other forms of exploitation (including domestic servitude, labour exploitation and forced criminality). Furthermore, the clients all have a significant immigration history with previous Home Office interaction, one or more criminal convictions and a Home Office deportation decision issued against them. These characteristics of the clients' experiences correlate to concerns that have been raised by stakeholders directly engaged in advocating on behalf of victims and survivors as well as those who are policy and research focussed.<sup>3</sup> The cases drawn on in this report are the most legally complex trafficking cases that the Law Clinic has taken on since the inception of the project. Through closely examining the case files it was possible to gain a rich insight into the realities of how the solicitor, acting on behalf of the clients, interacted with aspects of the UK's anti-trafficking framework, including Home Office decision-making procedures. It also provided a lens through which to consider the impact that the legal representation had on the clients' legal status and the outcome of the cases.

In practical terms, the legal case files contained the following documents:

- Copies of interviews
- Copies of decisions
- Copies of court or tribunal papers
- Copies of evidence submitted
- Home Office (UKBA/ UKVI) internal notes
- NRM notes and records

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<sup>2</sup> This was designed in line with the University of Liverpool's ethical guidelines and the project approved and overseen by the Central Ethics Committee.

<sup>3</sup> Joint Submission to the Group of Experts on Action against Trafficking in Human Beings, Response to the Third Evaluation Round of the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, *Access to justice and effective remedies for victims of trafficking in human beings in the United Kingdom*, 28<sup>th</sup> February 2020. < [https://www.antislavery.org/wp-content/uploads/2020/03/GRETA\\_submission\\_Final-Feb20.pdf](https://www.antislavery.org/wp-content/uploads/2020/03/GRETA_submission_Final-Feb20.pdf) >

- Notes of liaison with police and other agencies
- Medical evidence
- Notes made by the solicitor

When examining the case files, a standardised template was used and was completed and notes were taken to record additional observations and to build up a set of emergent themes. All of the notes, chronology and attached documents were read and a summary of each case file was created to support reflection.<sup>4</sup> The formal correspondence, letters and notes were analysed to gain understanding of the clients' legal status at the time they first encountered the legal practitioner and once the representation had developed and then finalised.

The analysis also sought to understand how the Home Office had interacted with the client in the past, e.g. through examining previous immigration decisions, and throughout the course of the correspondence with the client's legal representative when seeking, e.g. discretionary leave to remain (or other forms of leave). It was also possible to assess the implications of a positive CG decision under the NRM process for the clients concerned, particularly in terms of what added value it could bring for the person's legal status or right to remain in the UK. Therefore, this analysis gave a rich insight into the course that the legal cases of these three clients had taken, both historically and once the Law Clinic had taken responsibility for legal representation. The case files - with all of the detailed statements, evidence, documentation and correspondence that they encompass - also allowed us to understand how the clients' previous experiences have been perceived and/or recorded by various decision-makers and organisations throughout the course of their engagement with the UK authorities.

### 3. The law and policy context

#### 3.1 Modern Slavery Act 2015

In recent years the concept of 'modern slavery' has been increasingly used as an umbrella term to capture a number of related forms of exploitation, such as trafficking, forced or compulsory labour, domestic servitude and

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<sup>4</sup> Case file analysis has been effectively used in other studies to gain an insight into experiences of vulnerable cohorts. For example, in the context of young people placed in secure accommodation where child sexual exploitation was the main risk factor: O'Neill Gutierrez, *Alternatives to high-cost and secure accommodation for victims of child sexual exploitation (CSE) in Greater Manchester: Analysing case files to explore young people's journeys through social care* (The Children's Society, September 2016) < [https://www.itsnotokay.co.uk/downloads/act\\_docs/the\\_children\\_s\\_society\\_-\\_case\\_file\\_analysis\\_report.pdf](https://www.itsnotokay.co.uk/downloads/act_docs/the_children_s_society_-_case_file_analysis_report.pdf) > (a study involving analysis of 10 case files).

criminal exploitation. In the UK, the Modern Slavery Act 2015 (MSA) encapsulates this approach. The MSA reformed and consolidated the previously piecemeal law on human trafficking and related offences of slavery, forced or compulsory labour and servitude, and put in place a unified legislative regime to address these issues. In addition to providing detail on these offences, the MSA sets out maximum sentences for those convicted, with an increased term of life imprisonment. The MSA also makes provision for trafficking reparation orders to be made in order that victims receive compensation (s.9). In terms of victim protection, the Act contains a defence for victims who have committed an offence attributable to their slavery or trafficking situation (s.45).

### 3.2 The international legal framework

The UK's legal response to trafficking is embedded within broader international legal frameworks. The UK is signatory to the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime (the 'Palermo Protocol'), and the Council of Europe Convention on action against trafficking in human beings 2005 (ECAT).

The Palermo Protocol contains the well-established definition of trafficking which ECAT also uses as a foundation. This tripartite definition focusses on the action, means and purpose of trafficking. The action translates as the 'recruitment, transportation, transfer, harbouring, or receipt of persons'; the means includes 'threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person'; and the purpose is for exploitation. That exploitation 'shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'.

### 3.3 The National Referral Mechanism

The NRM is the process established by the UK government for identifying victims of modern slavery and providing support, including accommodation. It was introduced in 2009 as part of the UK's ratification of ECAT.

Only certain designated First Responders can refer an individual to the NRM - including the police, social services or some non-governmental organisations (NGOs). Decisions as to whether an individual will be



classified as a victim of modern slavery are now made by a Single Competent Authority (SCA) within the Home Office.<sup>5</sup>

The SCA initially makes a determination, which should be completed within five days of referral, as to whether there are 'reasonable grounds' (RG) to believe the person may have been trafficked. A positive RG decision then initiates a 45 day reflection and recovery period within which they are entitled to support and assistance (including, for example, provision in safe house accommodation and medical support). During this period, evidence is gathered and a 'conclusive grounds' (CG) decision should follow as to whether or not, on the balance of probabilities, the individual is considered to be a victim of trafficking.

In 2019, 10,627 potential victims of modern slavery were referred to the NRM (representing an increase of 52% from 2018).<sup>6</sup> Of these referrals, 5866 were in respect of adults and 4550 were in respect of children; 7224 were male and 3391 were female.<sup>7</sup> Labour exploitation was the most common type of exploitation recorded. In terms of the nationality of potential victims, the three most common nationalities recorded were UK (2,836 referrals), Albanian (1705 referrals) and Vietnamese (887 referrals).<sup>8</sup>

The Home Office end of year summary for 2019, published on 2<sup>nd</sup> April 2020, provides that 'around 7% of referrals made in 2019 have received a positive conclusive grounds decision so far. This is a result of the current length of time taken to make conclusive grounds decisions'.<sup>9</sup> In the case of CG decisions, the guidance does not stipulate a specific timescale other than to state the decision 'should generally be made as soon as possible after 45 calendar days'.<sup>10</sup> Despite this direction, it is clear that the reality for many of those referred into the system is a long period of waiting before a CG decision is reached. As of 10 February 2020, 8,429 of those referred in 2019 were still awaiting a CG decision. The Home Office end of year summary document further states that '10% of referrals made in 2019

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<sup>5</sup> Decisions about whether an individual is a victim of modern slavery are made by the Single Competent Authority (SCA) within the Home Office, regardless of the nationality or immigration status of the individual. Prior to 29 April 2019 there were two competent authorities (CAs). The CA within the UK Human Trafficking Centre made decisions in respect of EU/EEA nationals and a CA within UK Visas and Immigration (UKVI) made decisions in respect of non-EU/EEA nationals.

<sup>6</sup> Home Office, *National Referral Mechanism Statistics UK, End of Year Summary, 2019* < [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/876646/national-referral-mechanism-statistics-uk-end-of-year-summary-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876646/national-referral-mechanism-statistics-uk-end-of-year-summary-2019.pdf) >

<sup>7</sup> Home Office, *National Referral Mechanism Statistics UK, End of Year Summary, 2019*, p.3.

<sup>8</sup> Home Office, *National Referral Mechanism Statistics UK, End of Year Summary, 2019*, p.4.

<sup>9</sup> Home Office, *National Referral Mechanism Statistics UK, End of Year Summary, 2019*, p.5

<sup>10</sup> Home Office, *Modern Slavery Act 2015 – Statutory Guidance for England and Wales*, Version 1.02, April 2020 <

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/912824/August\\_2020\\_-\\_Statutory\\_Guidance\\_under\\_the\\_Modern\\_Slavery\\_Act\\_2015\\_v1.02.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/912824/August_2020_-_Statutory_Guidance_under_the_Modern_Slavery_Act_2015_v1.02.pdf) >

have received a negative reasonable (1,064) or conclusive grounds (90) decision'.<sup>11</sup> The long delays within the NRM system mean that individuals can face prolonged periods of uncertainty as to their legal status, particularly as regards to their entitlement to live and reside in the UK.<sup>12</sup>

### 3.4 Immigration status of victims of modern slavery

A right of leave to remain is not automatically extended to those identified as victims of modern slavery under the NRM. Home Office guidance<sup>13</sup> provides that discretionary leave may be considered where an individual is not eligible for any other form of leave (e.g. asylum or humanitarian protection) and leave is necessary either:

- owing to the personal circumstances of the individual. Reflecting Article 14 of ECAT this should involve an assessment of whether a grant of DLR is necessary to provide protection and assistance to the victim.<sup>14</sup>
- in order to pursue compensation (but only if it would be unreasonable for them to pursue the claim from outside the UK); or
- because they are helping police with enquiries relating to a criminal investigation.

A grant of leave to remain can be extremely valuable for victims and survivors following a CG NRM decision, particularly for continuing access to formalised support structures. Secure immigration status is often the only intervention which can start to break the cycle of exploitation. This is an issue that has been highlighted by the Anti-Trafficking and Labour Exploitation Unit (ATLEU), a charity that provides legal representation to victims of trafficking and labour exploitation:

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<sup>11</sup> Home Office, *National Referral Mechanism Statistics UK, End of Year Summary, 2019*, p.5

<sup>12</sup> The issue of delay was picked up in the Joint civil society report on trafficking and modern slavery in the UK to the UN Human Rights Committee, 128<sup>th</sup> Session (02 March 2020 – 27 March 2020) < <https://www.antislavery.org/wp-content/uploads/2020/01/Submission-HRC-modern-slavery-in-UK-Jan20.pdf> >

<sup>13</sup> Home Office, *Discretionary leave considerations for victims of modern slavery*, Version 2.0, 10 September 2018 < [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/739436/dl-for-victims-of-modern-slavery-v2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739436/dl-for-victims-of-modern-slavery-v2.pdf) >

<sup>14</sup> See *R (on the application of PK (Ghana)) v Secretary of State for the Home Department* [2018] 1 W.L.R. 3955.

*Stabilising their immigration status and accessing safe housing and support allows victims the breathing space to make choices, to consider engaging with criminal prosecutions, and therapeutic interventions.*<sup>15</sup>

The rate of discretionary leave to remain grants to identified victims remains low. In 2017 the Minister for Vulnerability, Safeguarding and Countering Extremism, in a letter to the Work and Pensions Select Committee, provided evidence that 12 per cent of those with a positive CG decision were granted such leave.<sup>16</sup> In 2020 Every Child Protected Against Trafficking (ECPAT UK) has utilised freedom of information requests to probe this issue further.<sup>17</sup> They have found that between 2016-2019 there were 4695 positive conclusive grounds decisions in respect of individuals subject to immigration control (this figure includes adults and children).<sup>18</sup> Of these individuals, only 521 adults and 28 children were granted a period of discretionary leave to remain in the UK as victims of trafficking.<sup>19</sup> It has also been pointed out that, when such grants are given, residence permits are of limited duration only.<sup>20</sup> The data gathered by ECPAT, for example, shows that the majority of those discretionary leave grants between 2016-2019 (411 or 75 per cent) were for a length of time between 7-12 months.<sup>21</sup> This ECPAT report also states that in the same time period (2016 to 2019) asylum was granted to 2139 confirmed victims of trafficking/modern slavery. Of these, 443 were children. Overall, these figures underline the prevailing insecurity of residence, even for those formally recognised as victims of trafficking or modern slavery.

### 3.5 Legal aid for victims of trafficking and modern slavery

Gaining any form of residence grant is often unrealistic without legal advice and representation. Those who have been granted a positive RG decision or identified as a victim of modern slavery under the NRM are formally entitled to legal aid in order to support an application for discretionary leave to remain (or other immigration application, including

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<sup>15</sup> ATLEU, *Legal Aid for victims of trafficking and modern slavery*, 30 April 2018 <

<https://atleu.org.uk/news/legalaidimmigrationadvice> >

<sup>16</sup> ATLEU, *Legal Aid for victims of trafficking and modern slavery*, 30 April 2018. See also Letter from Sarah Newton (Minister for Vulnerability, Safeguarding and Countering Extremism) to Chair of the Work and Pensions Select Committee, 17 February 2017.

<sup>17</sup> ECPAT, *Child trafficking in the UK 2020: A snapshot*, October 2020 < <https://www.ecpat.org.uk/child-trafficking-in-the-uk-2020-snapshot> >

<sup>18</sup> Referring to non-UK nationals and EEA nationals not subject to immigration control, i.e. exercising rights under the EU Treaties.

<sup>19</sup> p.38.

<sup>20</sup> GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom* GRETA(2016)21 (Council of Europe), 7 October 2016, pp.222-227.

<sup>21</sup> ECPAT, *Child trafficking in the UK 2020: A snapshot*, October 2020, pp.36-37.

an Article 8 application).<sup>22</sup> Those who have received a negative RG or CG NRM decision may be able to obtain legal aid in order to fund a judicial review of the decision, in light of the absence of a right to appeal.

There is no entitlement to legal aid for those navigating the NRM prior to an RG decision. Consequently, there is no access to legal aid funding for individuals to receive legal advice before they enter the NRM (although there may be times when such advice can be included as part of an asylum case).

It has previously been demonstrated by other researchers that, in spite of this formal entitlement to legal aid, in reality there can be significant barriers to accessing legal representation. In 2019 a report by Jo Wilding,<sup>23</sup> highlighted that the approach taken towards immigration legal aid had created both deserts and droughts. While some areas have no legal aid providers whatsoever, other areas might appear to have a supply of providers but, in practical terms, clients still cannot access such representation or advice. Wilding categorized the immigration and asylum legal aid system as a 'market failure' 'both in terms of geographical availability of services and the ability to ensure adequate quality. The supply side of the market is precarious, despite robust demand, because of the contract and fee regime.'<sup>24</sup>

Wilding's report drew out how issues arise when the legal aid standard fee does not cover the cost of work carried out on the case such that costs, therefore, shift from the Legal Aid Agency to the legal practitioner. Trafficking or modern slavery-related cases frequently fall into this category, owing to their complexity and extent of delay within the NRM decision-making framework. Essentially, the structure of the legal aid system renders certain types of cases financially unviable for providers.

ATLEU had previously expressed similar concerns. Submitting evidence to the Government's Post-Implementation Review of LASPO,<sup>25</sup> ATLEU highlighted their own research which had found that the North of England was faring especially badly in terms of advice deserts, with victims frequently experiencing waiting times of up to 12 months for an initial appointment with an immigration adviser. A 2020 report by the Young

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<sup>22</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, schedule 1, part 1, paras. 32 and 32A. Article 15 of ECAT obliges states to provide the 'right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.'

<sup>23</sup> Wilding, J., *Droughts and Deserts: A Report on the Immigration Legal Aid Market* (Joseph Rowntree Foundation, 2019) <

<http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf> >

<sup>24</sup> Wilding, J., *Droughts and Deserts: A Report on the Immigration Legal Aid Market* (Joseph Rowntree Foundation, 2019), p.5.

<sup>25</sup> ATLEU, *Legal Aid for victims of trafficking and modern slavery*, LASPO Briefing and Evidence (2018) < [https://drive.google.com/file/d/1SrVQg7nXOtnZXCuJuSzgVoj5bfXHn\\_tg/view](https://drive.google.com/file/d/1SrVQg7nXOtnZXCuJuSzgVoj5bfXHn_tg/view) >

Legal Aid Lawyers (YLAL) organisation also reiterated concerns about access to legal aid lawyers for victims of trafficking. Their research found that victims of trafficking were incurring debt and/or returning to exploitation in order to pay for legal representation privately due to not being able to find an available legal aid provider.<sup>26</sup>

### 3.5.1 Additional financial pressures stemming from the Covid-19 pandemic

The Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020, which came into force on 8<sup>th</sup> June 2020 and set a new legal aid fee for this area for one year, were revoked by the Lord Chancellor on 4<sup>th</sup> August<sup>27</sup> following public pressure from organisations such as the Young Legal Aid Lawyers (YLAL).<sup>28</sup> The effect of the changes within the regulations was to increase both the legal aid fixed fee and the ‘escape fee’ (the level of work which must be carried out before legal practitioners are paid hourly rates). This would have had the effect of further limiting lawyers’ ability to take on complex cases because it would have made it more difficult for them to reach the escape free threshold.

While the revoking of these regulations is to be welcomed, the broader impact of Covid-19 on legal practitioners working in the immigration-trafficking and modern slavery area remains notable. ATLEU have also highlighted how the coronavirus pandemic is having a destabilising impact on the provision of legal advice through legal aid to victims of trafficking and modern slavery.<sup>29</sup> They point specifically to the worsening of the financial position of many organisations which were already under significant pressure prior to the outbreak. There are also associated additional costs that legal advice providers have had to bear as a consequence of the pandemic, such as those resulting from staff working remotely. For many, there are also ongoing barriers to income generation. In essence, the pandemic further complicates the (often already precarious) financial position of some legal providers. It increases the risk of providers being unable to take on complex or high-risk cases, meaning that availability of legal aid, and thus legal advice, to those who have experienced trafficking or modern slavery will be further reduced.

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<sup>26</sup> Young Legal Aid Lawyers, *A Sector at Breaking Point: Justice Denied for Victims of Trafficking*, June 2020 < <http://www.younglegalaidlawyers.org/ASectorAtBreakingPoint> >

<sup>27</sup> See <https://www.ein.org.uk/news/duncan-lewis-lord-chancellor-accepts-new-legal-aid-scheme-immigration-and-asylum-appeals-was>

<sup>28</sup> Young Legal Aid Lawyers, *A Sector at Breaking Point: Justice Denied for Victims of Trafficking*, June 2020.

<sup>29</sup> ATLEU Statement, *The impact of COVID-19 on the availability of legal advice for victims of trafficking and slavery*, May 2020 < <http://www.younglegalaidlawyers.org/sites/default/files/200621%20YLAL%20trafficking%20report.pdf> >



Overall, there are longstanding obstacles to those who have experienced trafficking or modern slavery accessing legal advice, including those relating to how difficult it is for legal aid providers to take on complex and long-term cases under the payment structure. The Covid-19 pandemic has added to the complexity and further enhanced the financial precarity of some providers.

#### 4. Situating the cases within the broader legal and policy framework and the research review: key findings and themes

The analysis of the Law Clinic case files brought to the fore key themes that were reflected not only in the experiences of the clients, but also in the findings of other research projects:

- It was necessary to **disentangle complex immigration histories and intertwining NRM referrals**, and to bring evidence to the attention of the Home Office which often adopted an unnecessarily adversarial approach.
- There had been **missed opportunities to identify and safeguard individuals**, particularly when they had been in contact with other professionals in the justice sphere.
- **Previous criminal convictions were having a considerable and lingering impact** on victims and survivors, even when it was acknowledged that such criminal activity was a consequence of exploitation.
- A **time-intensive approach** was needed to undertake the necessary but **complex case work** to address the legal issues and secure victims and survivors' legal status.

These dynamics conspire to make it an uphill struggle for individuals and their legal representatives to *secure their legal status*.

In this section we refer to the case files of A, B and C to examine some aspects of their legal cases which resonate with the broader research findings. We first provide some background information about the clients, and then highlight the key themes which were identified in the analysis. The appendix also provides some further details about the clients' case

files and the nature (and complexity) of their legal issues.<sup>30</sup>

## **Client A**

A is a woman in her 30s who had been brought to the UK from a country in South Asia in early 2007 by her husband. She had been under the control of her husband, and his family, since she was around 16 years old. A had been subject to serious physical and sexual abuse over many years. This continued in the UK and included A's husband implicating her in his criminal activities.

A had experienced sexual exploitation, forced criminality and domestic servitude. The exploitation was by her husband and his family and went on for a period of around 5 years outside of the UK followed by 12 years in the UK.

A and her husband had been co-defendants to a criminal prosecution and both had been imprisoned. A was found guilty of possession of an improperly obtained identity document and dishonesty. She pleaded guilty on the advice of her previous lawyer, who was also her husband's lawyer, and was appointed and instructed by her husband.

A's husband was also serving a prison sentence for sexual offences against other women. The family of her husband continued to control A whilst he was in prison. A's children had been taken into care of the local authority when she went to prison and they had remained in care since.

Following her release from prison, A was detained under immigration powers and a deportation order made against her whilst she was in detention.

## **Client B**

B is a woman in her 50s who came to the UK from a country in South East Asia 2005. She had been first taken from that country to one in East Asia and then brought to the UK by someone who promised to help her find a family member. B had then been subjected to forced criminality, sexual exploitation and domestic servitude for a considerable period of time. Prior to being represented by the Law Clinic B had already received a positive CG (in 2015) but had then been re-trafficked within the UK (and received a second CG decision in relation to this in 2018). She was refused

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<sup>30</sup> We have not provided specific details of the clients' nationalities or the countries in which they had spent time in aside from the UK.

discretionary leave to remain.

B had been convicted and imprisoned for cannabis production in 2007. This conviction directly related to forced criminality and her appeal against her conviction is still ongoing. After serving a prison sentence B had been held in immigration detention. She had previously had an asylum application refused. B had also made an application for leave to remain as a stateless person<sup>31</sup> in 2016. This was refused because there was a deportation order against her.

## Client C

C is a man in his 30s from a country in South East Asia. In 2015 he was taken from there to a nail bar in London where he was forced to work. After some time, in April 2016, he was taken to a cannabis farm in the north of England. He was made to tend cannabis plants and was physically abused when he tried to escape. He had no access to proper medical treatment and the wounds from the physical abuse were dealt with only by his captors. He was arrested in April 2016 and then convicted of cannabis production. After C had served a prison sentence he was detained under immigration powers. He made an asylum claim and disclosed that he was a victim of trafficking whilst in detention. C first met with the Clinic solicitor in November 2019.

## 4.1 Disentangling complex immigration histories and intertwining NRM referrals for an unnecessarily adversarial Home Office

It is well known that delays are endemic within the NRM decision-making system, as they are in relation to much of the immigration system (see 3.3 above).<sup>32</sup> Complexity, and thus duration, of cases can be compounded by the conduct of the Home Office. This occurred in the cases analysed for different reasons.

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<sup>31</sup> Under Part 14 of the Immigration rules, see < <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons> >

<sup>32</sup> See also Thomas, R., *Immigration Judicial Reviews: An Empirical Study* (University of Manchester, 2019 < [https://www.research.manchester.ac.uk/portal/files/131898159/Immigration\\_Judicial\\_Review\\_Report\\_Online\\_.pdf](https://www.research.manchester.ac.uk/portal/files/131898159/Immigration_Judicial_Review_Report_Online_.pdf) >

**First**, there were instances of **poor quality NRM decisions** having been made. For example, in C's case a negative RG decision had been made in 2017 in spite of clear indicators being present to suggest that he had been the victim of modern slavery (including a scar from a knife wound). The Law Clinic solicitor was able to rectify the situation in December 2019 by requesting reconsideration of the decision and setting out in detail the different indicators that were in fact present according to the paperwork in the file. In this case, then, the inaccurate initial decision increased the time that C was without a positive RG and, importantly, outside the scope of support available within the NRM. From this perspective, a link can be drawn between the Law Clinic clients' experiences and the broader research findings of Jo Wilding as regards to the impact of poor-quality decision-making by the Home Office which, essentially, creates additional work for the legal providers:

*'The evidence from this and other studies suggests that a large volume of failure demand is pulled into the system by poor-quality decision-making, particularly by the Home Office.'*<sup>33</sup>

**Secondly**, and relatedly, there were instances of the Home Office **failing to engage with their own previous findings, files and documentation relating to earlier encounters with the clients, both in terms of the NRM and relating to matters of immigration**. This had consequences for the Law Clinic clients, for example by increasing the time their legal status remained uncertain and undetermined or even by maintaining the vulnerable position of the client.

In A's case a Rule 35 report had been produced in April 2017. The Rule 35 mechanism requires doctors to report to the Home Office on any detainees they have health-related concerns about.<sup>34</sup> This report contained details of A's description of the abuse she had been subject to, perpetrated by her husband and his family. This included being raped by her husband and burnt. His sister and mother were physically violent towards her. They had threatened to take her children away if she told anyone. The Home Office response to the report stated that A came within the adults at risk policy as a level 2 vulnerable person. The implication of this was that there was professional evidence that A was vulnerable, but detention could continue because her condition fell short of the level 3 threshold (which includes acceptance that detention will

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<sup>33</sup> Wilding, J., *Droughts and Deserts: A Report on the Immigration Legal Aid Market* (Joseph Rowntree Foundation, 2019), p.2.

<sup>34</sup> Rule 35 of the statutory Detention Centre Rules 2001 (SI 238/2001).

likely cause harm). The Home Office response went on to state that, because of her offending and immigration history, continued detention was justified and deportation was likely to be effected within 4 months.

At this time, A was represented by the solicitors who were also representing her husband (discussed in 4.2 below). A then received bail from immigration detention. The grounds for her bail refer directly to the Rule 35 report. For example, they directly quote parts of the report about her missing her children. However, the Rule 35 report also referred to the abuse she was subjected to by her husband and his family. In spite of this, her release was predicated on her ongoing relationship with her husband's relatives as, due to the conditions of her bail, she then had a legal obligation to remain at their residence. This selective approach taken by the Immigration Judge to acting on the information set out within the Rule 35 report put A at risk.

It is clear that the Home Office, as well as the Immigration Judge granting bail, had access to all of the relevant files, including the Rule 35 report which contained information about abuse perpetrated by her husband and his family. They were also aware that bail was conditional on her continued residence with her husband's family. Had this collection of evidence been considered and engaged with holistically, it is likely that the possibility of A being in an abusive and/or exploitative situation could have been identified.

In B's case she had actually been positively identified as a victim of trafficking under the NRM on two separate occasions. She had been re-trafficked within the UK following the first positive CG in 2015.<sup>35</sup> B had also been detained by the Home Office several times. Despite having positive CGs, the Home Office continued to rely on a conviction and associated deportation order and refused an application for leave to remain as a stateless person solely because of the extant deportation order. The decision maker was (or should have been) aware of the CG decision which had found that B was a victim of forced criminality. The Home Office had not picked up on the relevance of trafficking or modern slavery, nor had they drawn on their own files in relation to the client. A new statelessness leave application was made later (in February 2020). This was found to have merit and was granted by the Home Office in June 2020 after a detailed explanation of the contents of Home Office files by the Law Clinic solicitor.

A key part of the lawyer's role in cases such as these is to disentangle the detail of the clients' immigration histories which tend to span a considerable number of years and to include a number of different

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<sup>35</sup> Her application for discretionary leave following this positive CG had been refused.



interactions with the Home Office and other UK authorities. In the cases analysed, frequently there was a complicated interplay of the clients' immigration histories with their experiences of exploitation, criminal convictions (considered in more detail below) and engagement with the NRM system. The clients in these cases had previously received criminal convictions and deportation orders, and had spent time in both prison and immigration detention. A's asylum application had been refused in 2017 and there had been ongoing appeal proceedings in the First-tier Tribunal (Immigration and Asylum Chamber) (hereinafter 'the Tribunal') relating to her case. This included five case management hearings which the Law Clinic solicitor attended, but which the Home Office did not send a presenting officer to. It was only once a senior immigration judge gave directions that she wanted the person responsible for the case within the Home Office to appear before her the next time the case was listed that a representative attended. It was also at this point that the case began to move forward.

As a positive CG NRM decision does not extend a concomitant entitlement to a grant of leave to remain, clearly a further important feature of the Law Clinic solicitor's role in these cases was to establish for her clients a forward-looking form of security of residence. In A's case, this was realised when the Home Office granted refugee status in late 2019. In B's case, leave to remain was granted under Part 14 of the Immigration Rules (statelessness) in mid 2020. Both confer a grant of leave for five years with a pathway to indefinite leave. At the time of writing this report, C's status remains unresolved as the case is ongoing.

### **A closer look at B's immigration and NRM history**

The detail of B's case, which stretched from 2006-2020, exemplifies the complexity of the cases and the extent of 'disentangling' that lawyers can be required to do. The relevant Home Office files, obtained in Spring 2019, ran to 1391 pages. It was through painstakingly picking through the files that the Law Clinic began to build a coherent picture and history.

The Home Office files showed that B was most likely stateless and that she had made an application for leave to remain as such to the Home Office in 2016 which had been refused, without substantive consideration, due to the deportation order attached to the conviction. At the time the statelessness application was refused she had received her first positive CG decision, which specifically recognised she was a victim of 'forced criminality'. It is, therefore, significant that this NRM outcome had no influence on the Home Office's approach to handling B's case: they were unwilling to look beyond the deportation order, despite it relating to a conviction she had as a consequence of her exploitation. B had also been refused discretionary leave to remain following her second positive CG

NRM decision. The Law Clinic requested a reconsideration of this decision (this was later accepted, in March 2020).

In addition, careful reading of the Home Office file uncovered that they had made a decision that they seemed unaware of in early 2018. This was to treat an interview with B as a fresh claim for asylum. The Law Clinic then pressed for a decision to be made on this claim. The Home Office did so - a refusal - which came with a right of appeal to the Tribunal. At the time of this refusal, December 2019, the Home Office was aware of B's two positive CG decisions, yet they continued to rely on the deportation order and cited the conviction, as evidence of bad character, in their reasons for refusal.

The Law Clinic then lodged an appeal on B's behalf and also made a further application for leave to remain on the basis of her statelessness, based on evidence in the notes and entries on the Home Office file. The Law Clinic solicitor set out in a letter to the Home Office what their files had disclosed - that B was stateless and that their notes showed that they were aware of this and that she could not return (or be returned) to her home country.

When B's asylum appeal came before the Tribunal, the Judge adjourned the case and raised questions of the Home office, with a timetable for the issues to be dealt with. It was following this direction that the Home Office agreed that B should not be deported and granted her leave to remain as a stateless person. Ultimately, then, the Home Office accepted the arguments advanced on B's behalf by the Law Clinic solicitor, but this outcome could have been realised more expediently had B's 2017 statelessness application - and B's bundle of previous decisions - been more rigorously engaged with at an earlier point. Aside from a psychiatric report which had been organised by the Law Clinic solicitor, the case was concluded on the basis of evidence that was already held on Home Office files.

**Thirdly**, there were problems accessing relevant decisions and paperwork which were important for pursuing the client's legal cases. There is no distinct, clear process for accessing NRM records. Instead, legal advisers tend to use the same gateway as applies to gaining access to personal data held in the immigration and borders system.<sup>36</sup> This undermines the claim that the Single Competent Authority operates independently of UK Visas and Immigration (UKVI). Difficulties accessing records delayed and hindered the ability of the Law Clinic solicitor to advance the clients' legal

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<sup>36</sup> <https://www.gov.uk/government/publications/requests-for-personal-data-uk-visas-and-immigration>.

cases. For example, in A's case, a Subject Access Request (SAR) was made to the Home Office in October 2018. These should be granted within 30 days, yet the Law Clinic solicitor had to press the issue after 96 days. Eventually in February 2019 a complaint was upheld about the delay. In C's case there is a particular problem accessing two sets of important records, although only one set relates to the Home Office. C's police records have not been accessed by his legal representative because he is unable to provide official identification. This, in turn, relates to his exploitation as it is owing to his trafficking and criminal exploitation that he is without identification. The Law Clinic solicitor has also been unable to access papers relating to C held by the Home Office. Despite having submitted the necessary documentation, the Home Office has not disclosed and has not provided an explanation. This is a longstanding issue which has held back the potential for C to articulate a legal position to secure his status. The papers were first requested by C's former solicitor in 2017, but this firm later stopped acting for him because they could not access his papers.

**The examination of the Law Clinic solicitor's interaction with the Home Office in respect of the clients demonstrates a process which is unnecessarily adversarial in nature, even though this is not stated explicitly as the basis of the system. It was necessary for the solicitor to disentangle complex legal histories, (re-)present evidence of the client's victimhood to decision-makers, as well as emphasise suitability for a form of leave to remain, in a strident manner in order to convince the Home Office of the clients' status and needs.**

## Conclusions

- Lawyers representing clients who have experienced a form of modern slavery often have to disentangle complicated immigration and NRM journeys, with historical aspects.
- The conduct of the Home Office can increase the complexity and duration of the cases. This includes poor decision-making and failing to engage in detailed consideration of relevant decisions, files and paperwork (including previous Home Office decisions, files and paperwork).
- The NRM is not predicated on the basis of being adversarial, but the interactions between the Home Office and the legal representatives can mirror characteristics associated with adversarial systems. It is often necessary, for example, for lawyers to emphasise (or re-emphasise) to decision-makers even basic aspects of clients' experiences or details of previous encounters with the Home Office.

- Gaining access to previous decisions, reports and relevant files relating to clients who have experienced modern slavery and have had previous encounters with the Home Office can be challenging for legal advisers, thus increasing the length of the legal case and the resulting uncertainty for the clients.

## Recommendations

- Decision-makers within the Home Office should apply proper scrutiny to ensure that decisions are of the highest possible standard. This is relevant both to decision-makers within the Single Competent Authority and UK Visas and Immigration. This includes taking full account of evidence already available to them, including in their own records and files.
- There should be a distinct process and gateway for accessing complete NRM records for those representing clients who have experienced a form of modern slavery.
- At a minimum, discretionary leave to remain should be granted automatically following a positive CG. This form of leave, however, represents only a short-term solution in most cases. The complex needs of individuals will often only be provided for through another status which provides secure leave to remain, for example international protection<sup>37</sup> or statelessness.<sup>38</sup>

## 4.2 Missed opportunities to identify and safeguard: the role of other justice professionals

There were a number of occasions when the three Law Clinic clients had come into contact with the authorities or individuals who could have potentially taken steps to improve their situation, such as safeguarding action. We focus here on two groups in particular: the police and lawyers/judges.

### 4.2.1 The Police

The police had come into contact with all of the clients during criminal investigations. All three had been arrested, charged and then convicted of

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<sup>37</sup> Such as humanitarian protection, covered by paragraphs 339C and 339D of Part 11 of the Immigration Rules: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum>.

<sup>38</sup> Part 14 of the Immigration Rules: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons>.

offences. There were significant failures to identify or explore indicators of modern slavery or to investigate the possibility that the individuals may have been exploited. This is in spite of section 45 of the Modern Slavery Act 2015, which embodies the principle of non-punishment of victims, by providing a defence to victims of trafficking or modern slavery who commit an offence. B had been convicted of cannabis production and C had been convicted of conspiracy to produce a class B drug (cannabis). They had been arrested at cannabis farms without the police taking into account the possibility that they were subject to exploitation. In B's case, the arrest and conviction was prior to the enactment of the Modern Slavery Act 2015, but C's arrest in 2016 was post the introduction of section 45. Consequently, the police's failure to engage with this is disappointing.

### *A closer look at A's interaction with the police*

A's arrest and conviction also occurred following the Modern Slavery Act's creation. She was found guilty of possession/ control of an improperly obtained identity document and dishonesty in 2016. The concerns about the conduct of the police in this case, however, go beyond the relevance of the section 45 defence as in August 2018 A had attempted to directly report her situation to the police. This is recorded in the police records in the following way:

*'The informant had called the [support provider] last week claiming to be a victim of modern slavery and that she is being forced to stay at her in laws against her will. This is because her husband is in prison and the family want to keep an eye on her to prevent her from leaving her husband so he doesn't get deported. She also reports that in meetings with solicitors the family speak for her and mistranslate her wishes about wanting to leave her husband.'*

*On police arrival and speaking to the female there were no offences. She has access to a phone at all times, the rear door was unlocked with a key in it so she has free access to come and go as she likes despite claiming otherwise and no threats to harm or initial violence are made against her. She stays at her in laws and is told to do the cooking and cleaning or to live elsewhere as she lives there rent free. This is a reasonable expectation of any person staying at an address.'*

*As such no offences are to be recorded excepting an unconnected s 39 she has disclosed. She could also not state why she had not called the police about this behaviour. The informant also failed to mention that she has been in custody multiple times in the last few months for document fraud but also claimed that the people in the house were criminals so was likely to be trying to shift the blame.'*



The police reports include biased and derogatory language about A, whose account was clearly not believed by the police. Their report above normalises as a 'reasonable expectation' the requirement to carry out work within the household without any steps being taken to explore this further. There were also other instances of the police being called to the property that A was living in, including times she had been slapped and kicked, when they had not taken any steps towards identifying safeguarding issues. She was even returned to her abusers by the police after one such incident.

The police had also inaccurately recorded A's ethnicity in their records.

From this perspective, our analysis of the Law Clinic cases corroborate findings of other research carried out in this area. For example, Hestia has focused particularly on victims of criminal exploitation and argues that both the police and legal professionals often lack knowledge about this form of modern slavery. As a consequence, 'victims are often overlooked because they are seen as suspects first and foremost.'<sup>39</sup>

Furthermore, in 2017 HM Inspectorate of Constabulary and Fire & Rescue Services published a report examining how the police in England and Wales are addressing human trafficking and modern slavery crimes.<sup>40</sup> This found that non-specialist police officers had low awareness of the section 45 defence and that low numbers of notifications were being made to the Home Office about potential victims. Pointedly, the report states:

*'Lack of awareness of the statutory section 45 defence means that officers attending incidents or crime scenes may not consider or gather sufficient evidence to help determine whether individuals are offenders or potentially victims forced to commit offences. Some victims, therefore, may be viewed solely as suspected offenders, when a higher level of awareness among officers might make such victims more likely to receive the*

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<sup>39</sup> Hestia, *Underground Lives: Criminal Exploitation of Adult Victims* (July 2020) < <https://www.hestia.org/Handlers/Download.ashx?IDMF=8ab229cc-75c6-4574-a47d-a8fafd7c19ee> > p.4.

<sup>40</sup> HM Inspectorate of Constabulary and Fire & Rescue Services, *Stolen freedom: the policing response to modern slavery and human trafficking* (2017) < <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/stolen-freedom-the-policing-response-to-modern-slavery-and-human-trafficking.pdf> >

*safeguards to which they would be entitled under the Modern Slavery Act 2015.*<sup>41</sup>

The report also raised concerns about the existence of immediate safeguarding practice, with clear indicators of trafficking or modern slavery being missed and victims remaining at risk.<sup>42</sup> There are clear synergies here with the experience of the clients in the case files being considered here.

#### 4.2.2 Lawyers and Judges

The clients in the Law Clinic cases had all been in contact with other lawyers aside from the Law Clinic solicitor, as well as with judges, particularly in relation to the criminal proceedings they had been involved in and in some cases also in respect of immigration claims. Engagement with legal practitioners raises some similar concerns around failure to initiate safeguarding as apply in relation to the police.

When B had been sentenced to imprisonment in 2007, the Judge had said:

*'The description you gave of your life as an illegal immigrant was pitiable... It amounted to being an economic slave ... It is palpably clear that sophisticated gangsters are using people like you to harvest the production of cannabis...'*

The Judge appears to have recognised that B had been exploited but, at the time, there was no formal section 45 defence available and so it is perhaps unsurprising that no formal steps were taken by the lawyers or Judge at this time to take account of this. However, the comments of the Judge in A's sentencing in June 2016, following the enactment of the Modern Slavery Act 2015, do not epitomise a less harsh or more reflective stance:

*'I accept that you had difficult personal circumstances and in certainly appears that your husband is very much involved in the obtaining of false [documents]. You do not speak English*

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<sup>41</sup> HM Inspectorate of Constabulary and Fire & Rescue Services, *Stolen freedom: the policing response to modern slavery and human trafficking* (2017), p.43.

<sup>42</sup> HM Inspectorate of Constabulary and Fire & Rescue Services, *Stolen freedom: the policing response to modern slavery and human trafficking* (2017), p.44.

*and you are to a degree or have been to a degree vulnerable within society but these offences strike at the heart of the UK's borders and of course as you accept, rightly they are so serious that only a sentence of immediate custody can possibly follow.'*

This is especially pertinent in the case of A given the particular (and dubious) situation of her legal representatives prior to the Law Clinic taking responsibility for the case. When A came to the Law Clinic in October 2018 she had an appeal against refusal of asylum/deportation pending and she was also part way through a trial on further charges of fraud. In both cases she was being represented by solicitors also instructed by her abusive husband. This legal representation was paid for privately by her husband and his family and was therefore outside of the legal aid system. There are concerning question marks over the role and conduct of A's former solicitors. These solicitors were aware of the Rule 35 report which referred to abuse perpetrated against A by her husband and his family (discussed in 4.1 above). Furthermore, they were responsible for her bail conditions being tied to her continued relationship with her husband's family.<sup>43</sup> It is clear there was a conflict of interest in their representation of both A and her husband.

In November 2018 the Judge in the trial, prompted by the Rule 35 report, identified the conflict of interest in relation to this. She adjourned the trial so that A could get her own criminal legal representation. Later on, in September 2019, this criminal case collapsed after the CPS offered no evidence. The Judge therefore entered not guilty onto the record. This (eventual) positive outcome came about as a consequence of the Judge's interception in, but there had clearly been a prolonged period of uncertainty and distress for the client prior to this during which no other attempts had been made to safeguard A, by her own solicitors, by the Home Office Presenting Officer, or previous judges the case had come before. This is despite the relevant papers containing indicators of trafficking.

## Conclusion

- There are missed opportunities in the justice system more widely to i) recognise indicators of modern slavery and ii) take safeguarding steps to protect victims and survivors. This can involve various professionals, including the police, lawyers, judges and the Home Office itself (e.g. when it reviews the circumstances of individual

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<sup>43</sup> There are striking safeguarding issues here, as well as significant concerns about the professional conduct of the solicitors. The Solicitors Regulation Authority Code of Conduct can be viewed at the following link <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>

cases in its capacity as initial decision-maker or when cases move to a tribunal or court setting and presenting officers take on responsibility for representing the Home Office position).

## Recommendations

- Training on modern slavery for justice professionals in different roles should be reviewed and updated to include enhanced guidance on appropriate steps to take should indicators of trafficking or modern slavery become apparent to them.
- Guidance for Home Office decision-makers and presenting officers should include direction on how to respond proactively to safeguarding concerns, for example if they come across information about an individual which suggests they may be at risk.

### 4.3 The considerable and lingering impact of criminal convictions

In the cases considered here the clients had pleaded guilty to a criminal charge, on the advice of their former legal representatives.<sup>44</sup> The repercussions of this were far-reaching for the clients, all of whom had been imprisoned (A had been sentenced to 27 months imprisonment; B and C had both been sentenced to 15 months imprisonment). They were all served with deportation orders and placed in immigration detention on release from prison under immigration powers. This reinforces findings of other research which has highlighted that immigration detention is sometimes continued even after an individual has received a positive NRM decision.<sup>45</sup> It has also been highlighted that the Home Office relies on convictions that are a direct consequence of the victim being exploited/in a situation of modern slavery when deciding whether to continue to detain someone.<sup>46</sup> B's case, and the Home Office's continued reliance on the deportation order connected to her conviction, *in spite of*

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<sup>4444</sup> There was insufficient scope in this study to explore the factors underpinning guilty pleading cases such as these and it is an issue requiring further investigation. A combination of reasons are likely to influence such a plea.

<sup>45</sup> Jesuit Refugee Service, *Survivors of Trafficking in Immigration Detention*, June 2019 < <https://www.jrsuk.net/wp-content/uploads/2019/06/Topical-Briefing-Survivors-of-Trafficking-in-Immigration-Detention-June-2019.pdf> > See also Esslemont, M., *Supported or Deported? Understanding the deportation and detention data held on human trafficking and slavery* (After Exploitation, July 2019). Maya Esslemont used freedom of information requests to obtain data from the Home Office and found that, in 2018, 507 individuals with positive reasonable grounds decisions and 29 with positive conclusive grounds decisions were detained under immigration powers.

<sup>46</sup> Jesuit Refugee Service, *Survivors of Trafficking in Immigration Detention*, June 2019.

her positive CG decision detailing she had been subject to forced criminality, typifies this (explored in 4.1 above).

It is clear that the convictions had broader negative impacts on the clients' experiences, and also on NRM decisions. For A, the conviction had also prompted the local authority to remove her children from her care. This decision had profound and long-term familial, emotional and mental health implications, for A and for the children concerned. For B, the criminal conviction (and accompanying deportation order) from 2007 had prompted the refusal by the Home Office of the application for leave as a stateless person, without any substantial consideration being given. This was despite the existence of a positive CG decision acknowledging that she was a victim of trafficking, including forced criminality. The Law Clinic solicitor presented the argument to the Home Office that it was unreasonable and unlawful to continue to rely on a criminal conviction that the Home Office itself had found to be connected to trafficking and exploitation.

### *Case study:*

#### **Client C's criminal conviction**

For C, there was reluctance on the part of the NRM decision-maker at reasonable grounds stage<sup>47</sup> to acknowledge that the criminal conviction could have been the consequence of forced criminality. This links with another cross-cutting aspect of the clients' experiences that relates to police views of the individuals at the time the criminal activity is discovered. The opinions of the police about the clients around the time of the arrest were also seen to have a lasting impact on these individuals due to the importance placed on findings and statements made by police officers later on, for example by other authorities and decision-makers. This was the case even after the passage of a considerable period of time and after the emergence of evidence as to the clients' status as victims of exploitation. In C's case the decision-maker relied heavily on an email from the police force which had been responsible for the prosecution. The Home Office minute reads:

*'We have received information from ... Police, confirming that their investigation was initially focussed on modern slavery and as such was consulted on by UKHTC, NCA and UK Immigration. However, following extensive evidence gathering, including surveillance, it was*

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<sup>47</sup> C is still awaiting a conclusive grounds decision.



*concluded all involved were fully compliant and complicit in the crime and that this was a case of organised immigration being used for criminality, as opposed to one of modern slavery.'*

The Home Office did not appear to take account of any material apart from these police comments in making C's RG NRM decision. In other words, the focus was narrow and only the initial police investigation and the client's guilty plea was taken into account. This is despite the fact that by the time of the RG decision there was a Rule 35 report which supported the client's account of having been trafficked, including detailing physical injuries consistent with his account. This and his disclosures were not considered. In this case the Law Clinic solicitor presented in a detailed letter to the Home Office how the indicators of trafficking had indeed been present. In late 2019 the Home Office agreed to reconsider and shortly afterwards made a positive RG decision.

An additional point to underline is the lack of any systematic method for reviewing previous convictions of victims of trafficking or modern slavery. Even when it has been acknowledged by decision-makers in the context of an NRM, asylum or other immigration claim, or a Judge in a criminal or immigration hearing, that crimes were carried out because an individual was held in a situation of exploitation, there is no formal system to review the conviction and the various actions that have been contingent on them.

Finally, a recent judgment of the European Court of Human Rights has implications for the approach of the UK authorities in this area. In *VCL and AN v UK*,<sup>48</sup> two Vietnamese men had been convicted of drug-related offences (after entering guilty pleas) as minors. They had subsequently been recognised as victims of trafficking under the NRM. The Court found that Article 4 of the European Convention on Human Rights (ECHR), which prohibits forced labour, had been violated by the UK as a consequence of the failure of the national authorities to protect the applicants, as potential victims of trafficking. The Court took particular account of the circumstances in which the applicants had been discovered – which indicated the potential of trafficking – and that they had been charged with the criminal offences (to which they were advised by their legal representatives to plead guilty) without the Competent Authority having assessed their status first. Ultimately, the Court held that the UK had not complied with its duty under Article 4 to take 'operational measures' to protect the applicants, first as potential victims or, secondly, as individuals formally identified under the NRM as having experienced trafficking.<sup>49</sup> The

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<sup>48</sup> Judgment of 16<sup>th</sup> February 2021 (no. 77587/12 and no. 74603/12).

<sup>49</sup> The European Court of Human Rights also found that the proceedings as a whole had not unfair and thus in violation of Article 6 of the ECHR which enshrines the right to a fair trial.

government was ordered to pay damages to each applicant. At the time of writing the government had commented only to say it was ‘carefully considering’ the judgment.<sup>50</sup>

## Conclusions

- The Home Office continues to prioritise immigration enforcement over protection of victims and survivors. This can have particularly severe consequences for individuals who have criminal convictions.
- Previous criminal convictions, *even when recognised as having been carried out as a consequence of the exploitation they had been subject to*, continue to have significant detrimental impacts for the clients. This includes continued reliance on deportation orders which, in turn, had negative repercussions for applications for leave to remain.
- The absence of any systematic method for reviewing previous convictions of victims and survivors of modern slavery compounds the injustice experienced.

## Recommendations

- Once an individual has been identified as a victim of modern slavery through a positive CG decision, this should automatically take precedence over any deportation orders issued in respect of the individual. The immediate priority should be on providing support.
- Where an individual has been identified as a victim of modern slavery the Home Office should review the case with a view to revoking any deportation order without a requirement for the individual to make a formal application.
- A system for the review of previous criminal convictions for those who receive a positive CG decision should be established. This might be a referral system to the Criminal Cases Review Commission so that criminal convictions of those identified as victims of modern slavery are automatically reviewed.

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<sup>50</sup> As reported at < <https://www.lawgazette.co.uk/news/strasbourg-uk-failed-to-protect-child-trafficking-victims/5107444.article> >

#### 4.4 Time investment of solicitor: implications for funding of legal cases

A dominant feature of the cases considered here is the considerable time needed to be invested into the casework in order to bring about the positive outcomes for the clients. The Law Clinic does not hold a legal aid contract. The principal function of the Clinic is to teach law students through exposure to real legal cases. The Clinic takes on a limited number of cases (far fewer than a legal aid practice) but devotes significant time and resources to each one. Undoubtedly, the legal position of the clients was enhanced as a consequence of the legal representation provided by Liverpool Law Clinic. Various factors influence the level of time investment required in relation to the cases. The cases certainly reflect the 'long and complex' description of typical modern slavery cases with an immigration component.<sup>51</sup> As the discussion in the above sections has demonstrated, the cases involved intertwining NRM, immigration and criminal law issues that spanned a considerable period of time. Gaining access to relevant documentation and then undertaking a detailed examination the paperwork was time intensive. Moreover, it took a considerable amount of time to talk to the clients themselves to take instructions, all of whom were traumatised as a consequence of their experiences and were recollecting distressing events that had occurred over a long period. Taking time to take careful and proper instruction from them, with the help of trained student volunteers, was crucial in order to gain a full understanding of their legal position and to provide the basis of future legal action. When working on both cases A and B, the Law Clinic solicitor spent several days just reading the papers from the Home Office, police and solicitors who had previously represented the clients. There is also a connection here with the concept of 'failure demand'<sup>52</sup> (see 4.1 above) in that a lot of the Law Clinic solicitor's time was spent addressing failures or oversights of the Home Office, including needing to set out to Home Office decision-makers the details contained in Home Office files and previous decisions (this was especially pertinent in B's case, but also applies to a significant extent A's case).

It is significant that, owing to the clinical legal education imperative that underpins the Clinic ethos, the supervising lawyers (and students) pay extremely close attention to the detail of the cases, and revisit the relevant documents on a number of occasions, to an extent that is unlikely to be possible in most legal practices. As a consequence, this project was also able to examine what this comparatively time-rich legal representation from an experienced specialist immigration lawyer would mean for the individual clients' cases and their outcomes. For the clients

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<sup>51</sup> ATLEU, *Legal Aid for victims of trafficking and modern slavery*, LASPO Briefing and Evidence (2018).

<sup>52</sup> Wilding, J., *Droughts and Deserts: A Report on the Immigration Legal Aid Market* (Joseph Rowntree Foundation, 2019, p.2).

considered here, this legal representation was transformative for their legal status. Under the model which the Law Clinic operates, it is possible to only take on a small number of cases, but significant resource can be invested in them.

Given the specific status of the Law Clinic within the University of Liverpool, the provision of legal advice and representation was not subject to the sorts of limitations and challenges mentioned earlier in the report which are common in the legal aid system. The legal practitioner, while not having capacity to take on a significant number of cases at any one time, is able to spend more time and invest significant resource on the cases than is possible in legal aid-funded private practice. The Law Clinic also has some charitable funds that can be used for disbursements. This proved to be particularly valuable in A and B's cases. For A, this funding was used for a detailed psychological examination and report.<sup>53</sup> This evidenced that A lacked agency and also suffered from PTSD, as well as other psychological issues.<sup>54</sup> In B's case this funding provided for a psychiatric report which evidenced B's particular vulnerabilities and diagnosis of PTSD.

#### **4.4.1 Pro bono legal representation: not an alternative to an appropriately funded legal aid system**

As the Law Clinic provides legal advice and representation free of charge it tends to be classified as falling within the remit of 'pro bono' – 'for the public good' – legal services. Pro bono legal work can occur generally, through legal practitioners taking on work free of charge and in addition to their usual practice, or through a form of clinical legal education, as in the case of the Clinic. The Law Clinic balances the dual functions of providing legal advice to clients and delivering clinical education to students due to its presence within the University. This is relevant as there is a definite turn towards the recognition and promotion of pro bono legal activity. Indeed, the Competent Authority guidance states that victims who cannot afford legal representation may be eligible for legal aid 'or they can try and find a pro bono legal representative'.<sup>55</sup>

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<sup>53</sup> A psychological report was also obtained for B in this way.

<sup>54</sup> The onus is on applicants to demonstrate medical and/or psychological issues. In legal aid funded cases, such reports should fall within the scope of funding and be available.

<sup>55</sup> Home Office, *Modern Slavery Act 2015 – Statutory Guidance for England and Wales*, Version 1.02, April 2020, para. 15.100 <  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/912824/August\\_2020 - Statutory Guidance under the Modern Slavery Act 2015 v1.02.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/912824/August_2020_-_Statutory_Guidance_under_the_Modern_Slavery_Act_2015_v1.02.pdf) >

While the outcomes for the clients considered here of this legal representation were positive,<sup>56</sup> and they had been able to access a lawyer with a specialised level of relevant knowledge and experience, this should not be taken as the norm for all pro bono legal services. There is a variable quality in pro bono legal advice, taking into account the broad range of providers that undertake this work and the disjuncture that can exist between the specialism of legal advisers with capacity to provide pro bono legal advice and the legal advice needs of those individuals who they see. For example, private practice lawyers with capacity to take on pro bono work may not have the necessary expertise in the areas of law most in-demand by clients who seek pro bono legal advice (e.g. employment, housing, welfare benefits, immigration). In contrast, legal aid lawyers often have the necessary expertise to provide a good quality of legal advice, and are subject to a certain degree of quality control through the elements of peer review which exist in the system. Yet, it is this resource which is in short supply. Given the apparent move politically towards recognising the importance of legal advice and representation, and the centrality of legal status to securing positive outcomes for victims and survivors, it is confounding that there is such a lack of importance attached to proper accessible legal representation delivered through formalised structures.

There is a concerning undercurrent when it comes to the broader implications of the findings of this study. By emphasising the positive impact that such specialist, dedicated and time-rich legal representation can achieve for this small number of clients, it also serves to underline that access to such legal advice and support is not a realistic option for the vast majority of those in similar circumstances owing to the current way in which the system of legal aid is working. As was discussed above (in 3.5), victims and survivors often experience significant difficulties in accessing legal aid lawyers (especially outside of London and the South East). It would not be viable for pro bono legal services like Liverpool Law Clinic to offer services such as those relating to the cases discussed here on any scale other than a very limited one. They can only take on a very small number of legal cases in light of their limited number of legal practitioners and other non-legal practice obligations (in the case of the Law Clinic solicitor who represented the clients in these cases, this related to her teaching and legal education role within the University). The ‘success’ of schemes such as Liverpool Law Clinic’s anti-trafficking project do not suggest that similar pro bono schemes should be developed *in place* of lawyers funded by legal aid. Instead, the worthwhile outcomes achieved on behalf of clients demonstrate what is possible when lawyers have sufficient time and resource to represent victims of trafficking.

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<sup>56</sup> It is important to keep in mind that not all aspects of the cases are ‘complete’ at the time of writing. For example, C is awaiting a conclusive grounds decision.

Pro bono legal work can fulfil a valuable dual role of providing clinical legal education opportunities whilst furthering access to justice, as is the case in the Law Clinic. However, it is not, and cannot be, a viable alternative to a robust and responsive legal aid system which remunerates practising lawyers appropriately for the time spent on case work. Pro bono representation, whether delivered by a lawyer outside of their usual practice work or through an educational setting, is a resource that few people can realistically access and exists only on the edges of provision.<sup>57</sup> Any glorification of pro bono legal representation rather overstates the role it can, and should, play in ensuring access to justice for victims and survivors. Moving forward, the more suitable focus would be to support entitlement of victims and survivors to access quality legal advice and representation within a strengthened legal aid system. This would enhance the level of fairness in the system which determines access to legal advice for victims and survivors. Spotlighting pro bono lawyers in the way that the most recent guidance does risks promoting a system which can only deliver discretionary access to a sometimes exclusive, but variable, resource.

## Conclusions

- Cases such as those considered here which involve a combination of trafficking or modern slavery issues, interconnected with immigration and/or asylum issues *and* previous criminal convictions (often directly connected to the client's exploitation), are clearly complex. As such, a resource and time intensive approach to the legal casework is needed to resolve them. This might include expenditure on expert reports.
- Pro bono legal advice and representation, when carried out by a specialist and experienced legal practitioner, can in some circumstances provide clients who have experienced modern slavery with dedicated and time-rich legal representation and lead to good outcomes. However, this model can only ever deliver a quality service to a small number of clients. Pro bono is an exclusive, but variable, resource. It is not a viable alternative to a robust and responsive legal aid system which remunerates practising lawyers appropriately for time spent on casework *and* enables victims and survivors of modern slavery to access the legal support they need.

## Recommendations

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<sup>57</sup> Pro bono work within an educational setting also presents some challenges that are not relevant in other legal advice settings, such as requiring that the client consents to students having access to their (otherwise) confidential papers.



- The legal aid framework needs to take account of the specific complexities and resource implications of trafficking and modern slavery cases.
- Legal aid providers need to be adequately remunerated so as to make publicly funded provision of legal advice to victims of trafficking / modern slavery sustainable.
- Changes to the funding structure should be made in direct consultation with legal practitioners in the immigration and asylum legal aid sector.

## 5. Complete list of conclusions and recommendations

- Disentangling complex immigration histories and intertwining NRM referrals for an unnecessarily adversarial Home Office

### Conclusions

- Lawyers representing clients who have experienced a form of modern slavery often have to disentangle complicated immigration and NRM journeys, with historical aspects.
- The conduct of the Home Office can increase the complexity and duration of the cases. This includes poor decision-making and failing to engage in detailed consideration of relevant decisions, files and paperwork (including previous Home Office decisions, files and paperwork).
- The NRM is not predicated on the basis of being adversarial, but the interactions between the Home Office and the legal representatives can mirror characteristics associated with adversarial systems. It is often necessary, for example, for lawyers to emphasise (or re-emphasise) to decision-makers even basic aspects of clients' experiences or details of previous encounters with the Home Office.
- Gaining access to previous decisions, reports and relevant files relating to clients who have experienced modern slavery and have had previous encounters with the Home Office can be challenging for legal advisers, thus increasing the length of the legal case and the resulting uncertainty for the clients.

## Recommendations

- Decision-makers within the Home Office should apply proper scrutiny to ensure that decisions are of the highest possible standard. This is relevant both to decision-makers within the Single Competent Authority and UK Visas and Immigration. This includes taking full account of evidence already available to them, including in their own records and files.
- There should be a distinct process and gateway for accessing complete NRM records for those representing clients who have experienced a form of modern slavery.
- At a minimum, discretionary leave to remain should be granted automatically following a positive CG. This form of leave, however, represents only a short-term solution in most cases. The complex needs of individuals will often only be provided for through another status which provides secure leave to remain, for example international protection<sup>58</sup> or statelessness.<sup>59</sup>

### ➤ Missed opportunities to identify and safeguard: the role of other justice professionals

## Conclusion

- There are missed opportunities in the justice system more widely to i) recognise indicators of modern slavery and ii) take safeguarding steps to protect victims and survivors. This can involve various professionals, including the police, lawyers, judges and the Home Office itself (e.g. when it reviews the circumstances of individual cases in its capacity as initial decision-maker or when cases move to a tribunal or court setting and presenting officers take on responsibility for representing the Home Office position).

## Recommendations

- Training on modern slavery for justice professionals in different roles should be reviewed and updated to include enhanced guidance on appropriate steps to take should indicators of trafficking or modern slavery become apparent to them.
- Guidance for Home Office decision-makers and presenting officers should include direction on how to respond proactively to safeguarding concerns, for example if they come across information about an individual which suggests they may be at risk.

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<sup>58</sup> Such as humanitarian protection, covered by paragraphs 339C and 339D of Part 11 of the Immigration Rules: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum>.

<sup>59</sup> Part 14 of the Immigration Rules: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-14-stateless-persons>.

➤ The considerable and lingering impact of criminal convictions

### Conclusions

- The Home Office continues to prioritise immigration enforcement over protection of victims and survivors. This can have particularly severe consequences for individuals who have criminal convictions.
- Previous criminal convictions, *even when recognised as having been carried out as a consequence of the exploitation they had been subject to*, continue to have significant detrimental impacts for the clients. This includes continued reliance on deportation orders which, in turn, had negative repercussions for applications for leave to remain.
- The absence of any systematic method for reviewing previous convictions of victims and survivors of modern slavery compounds the injustice experienced.

### Recommendations

- Once an individual has been identified as a victim of modern slavery through a positive CG decision, this should automatically take precedence over any deportation orders issued in respect of the individual. The immediate priority should be on providing support.
- Where an individual has been identified as a victim of modern slavery the Home Office should review the case with a view to revoking any deportation order without a requirement for the individual to make a formal application.
- A system for the review of previous criminal convictions for those who receive a positive CG decision should be established. This might be a referral system to the Criminal Cases Review Commission so that criminal convictions of those identified as victims of modern slavery are automatically reviewed.

➤ Time investment of solicitor and implications for funding of legal cases

### Conclusions

- Cases such as those considered here which involve a combination of trafficking or modern slavery issues, interconnected with immigration and/or asylum issues *and* previous criminal convictions

(often directly connected to the client's exploitation), are clearly complex. As such, a resource and time intensive approach to the legal casework is needed to resolve them. This might include expenditure on expert reports.

- Pro bono legal advice and representation, when carried out by a specialist and experienced legal practitioner, can in some circumstances provide clients who have experienced modern slavery with dedicated and time-rich legal representation and lead to good outcomes. However, this model can only ever deliver a quality service to a small number of clients. Pro bono is an exclusive, but variable, resource. It is not a viable alternative to a robust and responsive legal aid system which remunerates practising lawyers appropriately for time spent on casework *and* enables victims and survivors of modern slavery to access the legal support they need.

## Recommendations

- The legal aid framework needs to take account of the specific complexities and resource implications of trafficking and modern slavery cases.
- Legal aid providers need to be adequately remunerated so as to make publicly funded provision of legal advice to victims of trafficking / modern slavery sustainable.
- Changes to the funding structure should be made in direct consultation with legal practitioners in the immigration and asylum legal aid sector.

## Appendix: Case Summaries

The clients' legal cases that are drawn on throughout this report all had case files that ran to hundreds of pages. These short summaries are intended to provide some further context to the background of the clients and to the exploitation they have experienced, as well as the different legal processes and decisions that relate to their cases.

### Case file 1: A

#### *Background*

A is a woman in her 30s. She had been brought to the UK from a country in South Asia in 2007 by her husband. She had been under the control of her husband, and his family, since she was around 16 years old. A had been subject to serious physical and sexual abuse over many years. This continued in the UK and included A's husband implicating her in his criminal activities.

#### *Exploitation*

A had experienced sexual exploitation, forced criminality and domestic servitude. The exploitation was by her husband and his family and went on for a period of around 5 years in South Asia followed by 12 years in the UK.

#### *Criminal conviction(s) and imprisonment*

- Mid 2016: A and her husband were co-defendants to a criminal prosecution. Both went to prison. A was found guilty of possession/control of an improperly obtained identity document and dishonesty. She pleaded guilty on the advice of her lawyer who was also her husband's lawyer and was engaged, instructed and paid by her husband.

A's husband also served a sentence for offences against another woman. A's family continued to control A whilst her husband was in prison. A's children were taken into care of the local authority when she went to prison.

- November 2018: a further criminal trial was adjourned by the trial judge on the basis that it was inappropriate to be represented by

same solicitor as husband.

- September 2019: criminal trial was again listed against A and her husband.
- September 2019. CPS confirmed that they were offering no evidence in trial on the basis they no longer had realistic prospect of successful conviction. The judge entered not guilty on the record.

### *Immigration detention*

- Detained in January 2017 immediately following custodial sentence.
- February 2017: bail was refused on the basis that “the applicant is likely to commit a criminal offence unless detained in custody”. Two further bail applications failed.
- May 2017: A was released from immigration detention. (The Home Office opposed each bail application A made).

### *NRM referral(s) and decision(s)*

- October 2018: NRM referral by a charity, with the assistance of a support provider and with legal advice from the Law Clinic.
- November 2018: positive RG NRM decision.
- September 2019: positive CG NRM decision.

### *Immigration decisions*

- June 2016: decision to deport.
- February 2017: refusal of asylum claim.
- November 2019: grant of refugee status.

### *Immigration Tribunal proceedings*

Five Case Management Review Hearings between December 2018 and November 2019, all attended by Liverpool Law Clinic. (Prior to this, three Case Management Review Hearings when represented by various former solicitors).

### *Police involvement*



A attempted to report her situation to the police in mid 2018. This is recorded in the police records.

### *Key legal issues that required attention*

- Criminal conviction from 2016. A entered a guilty plea. She was, at the time, represented by solicitors instructed by her husband and was advised to plead guilty. The conviction had serious consequences:
  - o Period of imprisonment and immigration detention.
  - o Children taken into the care of local authority
  - o Decision to deport made by Home Office.
- Presumptions made (and recorded) by police when she tried to seek help.
- Complex immigration history.
- Statements submitted to the Home Office and the tribunal by solicitors acting for A's husband and who were instructed by A's husband or his family.
- Ongoing Tribunal proceedings.
- NRM processes.
- Relevance of ongoing tribunal proceedings and NRM processes with ongoing criminal proceedings.
- Detailed instructions and recollection of events over a long period from a traumatised client
- Psychological evidence

## **Case file 2: B**

### *Background*

B is a woman in her 50s who came to the UK from a country in South East Asia in 2005. She was taken to a country in East Asia first and then brought to the UK by someone who promised to help her find a family member.

Prior to being represented by the Law Clinic, B received a positive CG in 2015. She was re trafficked within the UK and received a further positive CG in 2018 as a result.

### *Exploitation*

Forced criminality, sexual exploitation and domestic servitude.

### *Criminal conviction(s) and imprisonment*

November 2007: convicted for cannabis production (class C controlled drug). Sentenced to 15 months imprisonment.

### *Immigration detention*

Detained under immigration powers immediately after custodial sentence (until September 2008).

Detained again February 2009. Released on bail August 2009.

Detained again February 2012. Released on bail August 2012.

### *NRM referral(s) and decision(s)*

- NRM referral (1)
  - o Positive RG August 2015
  - o Positive CG August 2015 + refusal of DL
- NRM referral (2) June 2017
  - o Positive CG September 2018 + refusal of DL
- Reconsideration of DL request accepted March 2020

### *Immigration decisions*

- August 2008: Refusal of asylum.
- December 2008: Decision to deport
- March 2017: Application for leave to remain under Part 14 (statelessness) refused. Refusal was because of deportation order. The substance of the application was not considered because of the

outstanding deportation order.

- Dec 2019: Refusal of human rights / protection fresh claim.
- June 2020: Leave to remain under Part 14 of the Immigration Rules (statelessness) granted. Deportation order revoked.

### *Court/ Tribunal proceedings*

- November 2007. Criminal trial
- October 2008 Appeal against refusal of asylum (from August 2008) dismissed in her absence and with no representation.
- March 2020: Appeal against refusal of fresh claim. Adjourned.
- Appeal against conviction (ongoing).

### *Key legal issues that required attention*

- Criminal conviction. Consequences of this:
  - o Deportation decision
  - o Home Office continued reliance on deport order despite their own findings of forced criminality even in refusal letter of 31 December 2019.
  - o Home Office refusal of statelessness application because of deportation order.
- Protection / asylum claim
- Discretionary Leave (no immigration status in UK despite 2 x CG trafficking decisions)
- Complex immigration history
- Statelessness application
- Instructions from traumatised client with memory problems.
- Psychiatric evidence
- Immigration Tribunal proceedings.

### *Outcome(s) for the client*

- Granted leave to remain under Part 14 of the Immigration Rules (statelessness). This is a grant of leave for 5 years with a pathway to indefinite leave and potentially British citizenship.

- 2 x positive CG decisions recognising her as a victim of trafficking.
- Appeal against conviction is ongoing.

## Case file 3: C

### *Background*

C is a man in his 30s from a country in South East Asia. He was taken to a nail bar in South East England where he was forced to work. After some time (in April 2016) he was taken to a cannabis farm in the North of England. He was made to tend cannabis plants and was physically abused when he tried to escape. He had no access to proper medical treatment and the wounds from the physical abuse were dealt with by his captors. He was arrested in April 2016 and then convicted of cannabis production. After C had served a prison sentence he was placed in immigration detention. He made an asylum claim and disclosed that he was a victim of trafficking whilst in detention.

### *Exploitation*

Experienced forced labour and forced criminality.

### *Criminal conviction(s)*

In September 2016 he was convicted following a guilty plea of conspiracy to produce a class B drug (cannabis) and was sentenced to fifteen months in prison.

### *Prison and immigration detention*

When the prison sentence came to an end C was detained by the Home Office (December 2016). He was released on bail on in October 2017.

Whilst he was in detention he made an asylum claim (May 2017). In September 2017 there was a Rule 35 report. This confirmed a stab injury.

### *NRM referral(s) and decision(s)*

- May 2017: NRM referral (by Home Office).
- September 2017: negative CG decision.
- December 2019: request for reconsideration accepted.
- February 2020: positive RG decision made.

### *Immigration decisions*

- March 2017: decision to deport.
- March 2018: asylum claim refused and certified (despite considerable efforts, we have not been provided with this decision and cannot be sure that it was ever served).

### *Key legal issues that require(d) attention*

- Negative NRM decision.
- Refusal and certification of asylum claim but apparent non service.
- Lack of Home Office papers / records.
- Inability to access police records because of a lack of official ID.
- Previous solicitor stopped acting for him because they could not access his papers.
- Criminal conviction and associated deportation decision.
- Home Office failure to take account of any material apart from police comments in making RG trafficking decision. Therefore, only initial police investigation and client's guilty plea taken into account. There was by the time of the RG decision a Rule 35 report which supported client's account of trafficking. This and his disclosures were not considered.
- Poor mental health of the client.

### *Outcome(s) for the client*

- Reconsideration of negative NRM decision
- Positive RG decision made

- Section 4 accommodation continuing
- Support provided through NRM



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